WILLIAM & MARY LAW SCHOOL | VIRGINIA COASTAL POLICY CENTER

Summary of Key Findings from Tribal Outreach

Introduction

Pursuant to a Virginia Coastal Zone Management (CZM) Program grant, the Virginia Coastal Policy Center (VCPC) at William & Mary Law School engaged with representatives of Virginia's state and federally recognized tribes to identify what questions, concerns, and priorities the tribes have regarding natural and cultural resources in the coastal zone of the Commonwealth. The ultimate goal of the project is to increase communication of tribal needs to the state natural resource agencies, and in particular to the CZM Program, in order to encourage cooperation and potential partnerships. To solicit feedback from the tribes, VCPC attempted contact through various methods including mailed letters, email, telephone, and in-person meetings. As a result of these efforts, VCPC successfully communicated with representatives from ten of the eleven state recognized tribes (representing six of the seven federally recognized tribes) in the Commonwealth. The following report summarizes the key findings from these communications. Additionally, two memoranda which expand on certain elements of the key findings are included as appendices to the main report. Appendix A, *Tribal Resilience and Community Plans*, summarizes various tribal resilience plans across the nation as well as similar, non-tribal community planning efforts in Virginia. Appendix B, *Tribal Communities and State and Local Governments*, describes different examples of relationships between tribal, state, and local governments.

Virginia Coastal Zone MANAGEMENT PROGRAM

NOAA NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION U.S. DEPARTMENT OF COMMERCE

This project, Task # 93.03 was funded by the Virginia Coastal Zone Management Program led by the Virginia Department of Environmental Quality through Grant #FY18 #18N054190152 of the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, under the Coastal Zone Management Act of 1972, as amended.

Key Findings

A. Capacity Building Assistance

Most tribes in Virginia need at least some assistance with capacity building, including improvement of existing infrastructure and guidance on how to apply for grant money to pay for the needed work. Across all of the tribes that VCPC has spoken with, there are several infrastructure needs that are common to most. For example, some tribes need to build up the existing structures on their land, such as pavilions that need a concrete base to extend the useful life of the structure. Another commonly cited need was upgrades to their onsite bathrooms, especially to handle increased usage when the tribes host a festival or other activity that draws crowds to their land. Some tribes need to modernize their plumbing, such as with installation of a new water pump, and others need more capacity, like a deeper well to draw water. One tribe wants to build new bathrooms that are closer to the main pavilion area to make large gatherings easier. Many of the tribes cited the importance of festivals that bring members of the public to their land, and are interested in ways to make the holding of these events more feasible and ensure such events have a greater impact. This may include simple steps such as the installation of better signage to direct people to their land, or more involved activities such as entrance improvements and the construction of adequate parking facilities.

Many of Virginia's tribes have lands that are close to rivers or other bodies of water, and these waters are frequently an important aspect of tribal culture and economics. Some tribes have hatcheries to raise various species of fish and need funding to both continue operation and upgrade operations. Others have areas on their land that could qualify for a wetlands designation but need assistance to apply for that delineation. Some tribes want to repurpose their land, plant trees, and develop more economic opportunity. As part of that capacity building, nearly all of the tribes mentioned the need for grant assistance. Some have existing grants that need to be renewed, while others have specific projects, such as soil testing, that they want to accomplish with grant money. Most of the tribes would like to have a dedicated grant expert that either works for the tribe or that they can coordinate with. While the tribes have specific ideas for how to use grant funding, they are interested in assistance with respect to locating potential funding sources and navigating the application and reporting process.

B. Planning Assistance

Much of the capacity building that tribes identified related to increasing their community resilience and adaptation in the face of climate change. Many tribes have infrastructure that, while still functional, could be modernized to make the tribes' reservations more resilient. For example, gravel roads that are easily rutted by heavy rain could be paved to ensure that critical tribal infrastructure remains accessible in all weather. As another example, many tribes are either close or adjacent to a significant body of water, so shoreline resilience is a commonly cited goal, especially to be prepared for sea level rise and recurrent flooding. Since several tribes rely on local wells for their water supply, they would like to establish water quality testing procedures with the help of the Virginia Department of Environmental Quality (DEQ) or the U.S. Environmental Protection Agency (EPA). With sea level rise, saltwater intrusion into wells also becomes a concern. Some are also concerned about nearby industry overtaxing the aquifer, reducing the

pressure and supply for the tribes. For many of these projects, funding is of course critical, and help with obtaining grants, as discussed above, is important for these projects in order to help increase the tribes' resilience.

At a more macro level, several tribes expressed interest in developing a comprehensive planning document, similar to the plans used by many Virginia localities. In addition to assistance with the development of such a plan, tribes expressed interest in determining how their tribal plan would connect to and be integrated with local and state plans on similar topics. Some tribes have already partnered with various institutions, like the Virginia Institute of Marine Science (VIMS), to implement shoreline stabilization and living shorelines. Others have land that would benefit from such projects, but need assistance getting started. All of the tribes would like their projects to be properly integrated with state and locality plans, including the state Coastal Resilience Master Plan effort.

For additional details regarding potential frameworks for tribal resilience plans, please see Appendix A, *Tribal Resilience and Community Plans*.

C. Land Acquisition

Acquiring land is a goal of most tribes in Virginia, with some seeking to reacquire land they previously owned while others want to buy new land to expand their infrastructure. Many tribes are trying to reacquire land that they had previously sold to either the government or private parties. For example, one tribe donated land to create a state park, and now wish to use it for tribal activities, while another is seeking land from the Virginia Department of Forestry. Others have sold land and pay rent now to use it for their own purposes. For other tribes, they have identified land near or adjacent to their existing tribal lands and they wish to acquire it and already have an identified use for it. For example, one tribe, for which water is an important aspect of some of their ceremonial rituals, does not have access to any local bodies of water. They would like to expand their ownership of areas adjacent to their current land that abut waterways in order to allow for water-based rituals. Issues the tribes are facing include determining who owns the land they are seeking to acquire and the best method by which to acquire it.

The purposes of the tribes' land acquisition varies greatly. Some wish to build spiritual centers, community centers, or other buildings that will strengthen the culture of the tribe. Others want to use new land to expand their economic independence, such as new agricultural land, while others want to have the land to *protect* from agricultural or commercial development. Some have environmental or resilience uses in mind, or a desire to create an area where tribal members can live near one another. Also, the tribes want to make sure they understand any limits on the use of their newly acquired land.

D. Traditional Ecological Knowledge

Many tribes in Virginia want to pass along traditional ecological knowledge to their members and, in many cases, the public. Examples of projects some Virginia tribes wish to undertake include building community gardens, creating cultural museums and wellness centers, creating walking paths, and developing community fruit orchards.

Subsistence fishing is also a priority for a number of Virginia's tribes, both as a traditional practice to demonstrate and teach future generations and as a means to support current tribal members. There are currently a number of concerns about maintaining an adequate and healthy fish population throughout the State. Some tribes are worried about pollution, particularly Polychlorinated biphenyls (PCBs), a man-made chemical formerly used in a variety of industrial applications, entering the water and then the food chain. There are also concerns about dams blocking fish spawning grounds and reducing overall fish passage and populations. Some tribes would also like to see, or be involved with, projects to restore native and traditional fish populations. There is particular interest around efforts to recover the sturgeon population.

Finally, many of Virginia's tribes have interest in partnering with outside organizations on a number of projects surrounding traditional ecological knowledge. One common thread is the desire to develop Best Management Practices (BMPs) and land use plans for farming and utilizing currently held lands in a manner that best meets their needs and goals. Additionally, there is interest in partnering with an outside organization to research and analyze different traditional tonics and medicines.

E. Capturing Histories

A common desire of Virginia's tribes is to suitably capture their histories so that the tribes' stories are preserved and can be passed along. The ideas on how to accomplish this goal range in form from more common notions of historical accounting and preservation to creating ongoing and active programs centered on traditional knowledge transfer. Examples of the latter include programs for fishing and agriculture where current tribal members teach others traditional skills and knowledge in an outdoor classroom.

The tribes are also interested in obtaining outside funding for a variety of historical and educational projects. There is a desire to create a traditional knowledge encyclopedia to make the information more readily accessible. Some tribes would also like equipment and assistance to capture oral histories, as some currently have a limited capacity to record elders. Other tribes are also interested in funding for lecture spaces and equipment that could help with interpretive activities, such as canoes for paddling on a nearby river. There is a need for facilities to store artifacts as well as the need for resources to preserve those artifacts. Additionally, some tribes would like funding to conduct historical research. Specifically, there is interest in conducting research on individual tribal history and also on historical treaties between the tribes, the British crown, and colonial governments.

F. Improving Communication

Overwhelmingly, tribes in Virginia express a desire for increased communication at a number of levels: within individual tribes, between tribes, between tribes and local governments, and between tribes and state government. There was no specific consensus regarding the appropriate entity to convene or facilitate communications at these various levels. Some tribes indicated a desire to establish a new effort, separate from the existing Virginia Indian Advisory Board, for purposes of inter-tribal communications. Some state-recognized tribes identified a

desire to meet or open a dialogue with federally recognized tribes in Virginia to discuss their own applications for federal recognition and whether or not they are being carried out correctly. On the topic of federal recognition, a concern was also expressed that tribal interactions seemed to decrease upon gaining federal recognition.

There was also some concern about communication within individual tribes. There is a clear wish to engage tribal members and a desire to conduct projects that are widely accessible to members. Specific concerns were voiced about keeping members informed and connected with the tribe as they move farther away. To this end, there is interest in online platforms and tools, such as website redesigns, to help members who have moved away to stay connected.

For additional details regarding potential relationship frameworks between tribal, state, and local governments please see Appendix B, *Tribal Communities and State and Local Governments*.

G. Legal and Administrative Issues

Most of the tribes have individualized legal questions, but they can be categorized broadly. The most common concern is obtaining federal recognition among tribes that have not yet achieved that recognition. While each tribe may have its own reason for seeking federal recognition, the majority could benefit from the panoply of benefits that accompany such a designation. Another large category of issues includes environmental concerns. Many of the tribes face issues that many private property owners face, such as questions surrounding the siting and permitting of pipelines or electrical cables that may potentially cross their land. Interest in irrigation plans and soil testing for agricultural land, as well as a desire to partner with universities and other entities to study issues regarding saltwater intrusion and shoreline stabilization were identified. In addition to these environmental concerns, the tribes also face issues that any government would face, such as securing health care for their members.

Conclusion

While each tribal community within Virginia is unique, there are some concerns and priorities which are common across multiple tribal communities. Of the topics identified in this report, perhaps one that should be the initial focus is the idea of improving communication. Improved communication between tribes, between tribes and local governments, and between tribes and the state government is an important building block for the other topics identified in this report. Establishing a framework for such continued communication is a crucial first step to providing assistance with respect to capacity building, planning efforts, land acquisition, passing along traditional ecological knowledge, capturing tribal histories, and addressing legal and administrative issues.

William & Mary Law School | Virginia Coastal Policy Center

Tribal Policies Project

Virginia Coastal Zone Management Program

NOAA

This project, Task # 93.03 was funded by the Virginia Coastal Zone Management Program led by the Virginia Department of Environmental Quality through Grant #FY18 #18N054190152 of the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, under the Coastal Zone Management Act of 1972, as amended.

Background and Process

- ***Goal:*** Increase communication of tribal needs to the state natural resource agencies in order to encourage cooperation and potential partnerships.
- VCPC communicated with representatives from 10 of the 11 state recognized tribes (representing 6 of the 7 federally recognized tribes) in the Commonwealth to identify what questions, concerns, and priorities the tribes have regarding natural and cultural resources in the coastal zone of the Commonwealth.
- Key findings summarized in a final report, with two appendices.

Summary of Key Findings

Capacity Building Assistance

- Improvements to existing infrastructure
  - Refurbish existing structures, such as pavilions
  - Upgrade bathroom facilities
  - Increase water supply
  - Construct entrance improvements (roads)
  - Install signage to direct people to tribal events
- Support for hatcheries, wetlands delineation, and/or cultural centers
- Assistance in identifying grants, as well as navigating the application and reporting process

Planning Assistance

- Increasing community resilience and adaptation through comprehensive planning efforts
- Topic Areas:
  - Infrastructure improvements (*i.e.*, gravel roads)
  - Shoreline Stabilization for nearby water bodies
  - Water quality
  - Water supply
  - Land Use
- Desire to integrate with other locality and state plans

Land Acquisition

- Reacquire original tribal land
- Acquire new land adjacent to existing tribal holdings
- Several reasons for seeking land acquisition
  - Spiritual or cultural use
  - Community development
  - Economic use (such as new agriculture land)
  - Protecting open spaces
  - Resilience to flooding

Traditional Ecological Knowledge (TEK)

- Pass on TEK to future generations via
  - Cultural museums or community centers
  - Community gardens and orchards
  - Walking paths
- Establish partnerships with outside organizations to
  - Analyze traditional tonics and medicines
  - Establish best management practices for agriculture, fishing, and land use

Capturing Histories

- Preserve tribal stories and histories to pass down to future generations
  - History accounting
  - Passing on traditional tribal skills through development of TEK encyclopedia or paddling tours
- Resources for capturing histories
  - Recording equipment
  - Community spaces to share stories
  - Artifact preservation and storage

Improving Communication

- Desire to increase communication at various levels
  - Between Tribes, generally
  - Between Federally Recognized and State Recognized Tribes
  - Between Tribes and Local Governments
  - Between Tribes and State Government

Legal and Administrative Issues

- Every Tribe identified specific legal and administrative issues, but there are some broad categories where common questions arise
  - Federal Recognition
  - Environmental concerns – such as siting and permitting of pipelines or electrical cables
  - Development concerns – such as irrigation plans and soil testing
  - Health care issues

Appendix A:
Tribal Resilience and Community Plans

- Survey of various Tribal resilience plans across the nation and local community planning efforts in Virginia, in order to identify **key commonalities:**
  - Conduct a review of current environmental and community data to determine the community's "starting point"
  - Utilize community feedback at several points during the process
  - Conduct science-based vulnerability assessments
  - Form partnerships with agencies, academia, etc.
  - Establish monitoring and plan amendment process
  - Identify short-term and long-term funding sources

Appendix B: Tribal Communities and State and Local Governments

- Case studies demonstrate how certain Tribes and local or state governments are working together and how their collaboration affects Tribal and non-Tribal communities
- **State Level** – legislative committees, tribal delegates in state legislatures, government-to-government agreements and protocols, creation of a state level staff position to serve as liaison, and tribal impact statement for proposed legislation
- **Local Level** – community-level task forces, cooperative land use programs, and public safety commissions

Comments or Questions?

Please contact:

VCPC Director
Elizabeth Andrews
eaandrews@wm.edu
757-221-1078

Tribal Resilience and Community Plans

A Primer for Tribal Communities Looking to Create Their Own

By Karly Newcomb, JD Candidate 2021, Virginia Coastal Policy Center, William & Mary Law School

Introduction

As communities that are largely dependent upon their land for economic, cultural, and spiritual sustenance, Virginia tribal groups have begun to experience widespread implications of climate change in the health and livelihoods of their communities.[1] In addition, climate change impacts, such as higher temperatures, rising sea levels, and changes in precipitation, exacerbate stressors that already negatively affect Tribal access to resources, such as inadequate infrastructure and high poverty rates.[2] With this said, it is important that Tribal communities adequately prepare for these projected impacts by determining the specific implications for their land and community and creating a long-term plan to address Tribe-specific vulnerabilities. Fortunately, many Tribes throughout the United States have already begun to develop and implement Tribal resilience efforts through adaptation plans and climate vulnerability assessments.[3] These plans and assessments highlight the history and values of the Tribal community, the community's current state and vulnerabilities, as well as actions the community will take to build its resilience.[4]

Many of the Tribal resilience plans currently in existence are largely the works of Tribes located in the western United States.[5] However, localities across Virginia have also begun planning to address future concerns such as community health and safety, economic vitality, and environmental threats through documents such as hazard mitigation plans,[6] comprehensive plans,[7]

---

[1] *Facing the Storm: Indian Tribes, Climate-Induced Weather Extremes, and the Future for Indian Country, Confronting Global Warming Report*, NAT'L WILDLIFE FED'N, 2-4 (2011), https://www.nwf.org/~/media/PDFs/Global-Warming/Reports/TribalLands_ExtremeWeather_Report.ashxf.

[2] Kathryn Norton-Smith et al., *Climate Change and Indigenous Peoples: A Synthesis of Current Impacts and Experiences*, U.S. DEP'T OF AGRIC., 3 (2016), https://www.fs.fed.us/pnw/pubs/pnw_gtr944.pdf.

[3] *Tribal Climate Change Guide*, UNIV. OF OR., https://tribalclimateguide.uoregon.edu/adaptation-plans (last visited June 24, 2019). Resilience and adaptation are defined differently by different entities. For purposes of this paper, resilience refers to the "ability of a social or ecological system to absorb disturbances while retaining the same basic structure and ways of functioning, the capacity for self-organization, and the capacity to absorb stress and change" and adaptation refers to "actions in response to actual or expected climate change and its effects, that lessen harm or exploit beneficial opportunities." Both terms are used in plans to express the way a community desires to be prepared for a changing climate. *Blackfeet Climate Change Adaptation Plan*, BLACKFEET NATION (2018) vii-viii, https://bcapwebsite.files.wordpress.com/2018/04/bcap_final_4-11.pdf.

[4] *Tribal Climate Change Guide*, *supra* note 3.

[5] *Id.*

[6] *See, e.g., Regional Mitigation Plan*, CITY OF VA. BEACH, https://www.vbgov.com/government/departments/emergency-management/Pages/mitigation-plan.aspx (last visited June 24, 2019).

[7] *See generally* VA. CODE ANN. § 15.2-2223 (2018) (codifying the requirement that each locality has a comprehensive plan).

and resilience plans.[8] These plans can be used by Tribal communities as additional examples of ways to structure and implement a wide-ranging community plan.

This paper serves as an overview of various Tribal resilience plans across the nation and community planning efforts in Virginia. Although each plan is particularly detailed to address one locality's specified areas of concern, the plans are fully adaptable to meet any community's particular needs. Additionally, the paper includes a synthesis of commonalities that these plans share with the goal of providing an overview of resilience plan options and strategies that can be used as a framework for Tribal communities looking to create their own plans.

Tribal Resilience and Climate Adaptation Plans

A. Puyallup Tribe of Indians: Climate Change Impact Assessment and Adaptation Options

The Puyallup Tribe of Indians is a nearly 4,000 member Tribe located in Pierce County, Washington.[9] The Puyallup were federally recognized in 1854 through the Treaty of Medicine Creek.[10] Although the community has noted the effects of a changing climate for a number of years, the Puyallup took action in 2016 to create a climate change adaptation plan when the extreme variability in seasonal temperatures, reduced snowpack, and increased wildfire risk began to deeply threaten the resources, livelihood, and health of the Puyallup Tribal Community.[11]

The Puyallup Tribe's Climate Adaptation Plan ("The Puyallup Plan") formation process began when the Tribe's Environmental Department invited a team of local consultants and other Tribal departments together to host a "Kick Off" Meeting in April of 2015.[12] Other Puyallup Tribal Departments included in this initial phase included: Transportation, Air Quality, Water Quality, Fisheries, Cultural Resources, and Housing. At this meeting, the diverse team identified particular resources and sectors within the Tribal community that will likely be impacted by climate change.[13] The Environmental Department inputted these resources and sectors into a set of climate projections and an impact assessment for the region.[14] The models and data used for the projections were drawn from several pieces of scientific literature, including governmental and institutional reports.[15] Projections were created for the following climate impacts: increased temperature, precipitation and streamflow, wildfire, flooding, stream temperature, landslides and sediment transport, sea level rise, and ocean acidification.[16] By comparing projected climate trends to the

---

[8] *See, e.g., Norfolk's Resilience Strategy*, 100 RESILIENT CITIES (2015), http://100resilientcities.org/wp-content/uploads/2017/07/Norfolk_Resilient_Strategy_October_2015.pdf.

[9] *Climate Change Impact Assessment and Adaptation Options*, PUYALLUP TRIBE OF INDIANS, 8 (2016) http://www.puyallup-tribe.com/tempFiles/PuyallupClimateChangeImpactAssessment_2016_FINAL_pages.pdf; Governor's Office of Indian Affairs, *Federally Recognized Indian Tribes*, ST. OF WASH., https://goia.wa.gov/tribal-directory/federally-recognized-indian-tribes (last visited June 24, 2019).

[10] Treaty with the Nisqualli, Puyallup, etc., art. 2, U.S.-Nisqualli, Puyallup, etc., Dec. 26, 1854, 10 Stat., 1132, https://www.fws.gov/pacific/ea/tribal/treaties/Nisqualli_Puyallup.pdf.

[11] *Climate Change Impact Assessment and Adaptation Options*, supra note 9, at 8.

[12] *Id.* at 9.

[13] *Id.*

[14] *Id.*

[15] *Id.* at 46. *See e.g.*, CLIMATE CHANGE IN THE NORTHWEST, IMPLICATIONS FOR OUR LANDSCAPES, WATERS, AND COMMUNITIES (Megan M. Dalton et al. eds., 2013).

[16] *Id.* at 11-22.

Tribe's most important sectors and resources, the Puyallup were able to successfully identify the most vulnerable aspects within its community.

The Environmental Department then took inventory of existing environmental programs and plans already in place on the reservation.[17] This allowed the Tribe to identify current strengths and resources that could serve as the foundation upon which the Puyallup Plan could be built. In addition, the Environmental Department also conducted Tribal staff workshops, in which the staff screened adaptation measures adopted by other tribes.[18] These adaptation measures were screened for their effectiveness, affordability, and feasibility for the Puyallup Tribe specifically.[19] After identifying five adaptation options that performed the best within the specified criteria, these adaptation options were used to create goals for each priority resource and sector identified at the Kick-Off Meeting.[20] The five adaptation options included: (1) implementing protection, restoration, and management practices; (2) providing community education and guidance; (3) reevaluating policies, plans, and protocols; (4) gathering additional research; and (5) leveraging partnerships.[21]

The Puyallup Plan took two years to complete and was prepared for the Tribe by the Cascadia Consulting Group. No outside funding sources were noted for the creation of the Puyallup Plan.[22] However, the Puyallup Plan does acknowledge that although the Tribe lacks funds to undertake many preventative measures to address public health and safety risks, the Tribe does have the capacity to seek funding through the Federal Emergency Management Agency's (FEMA) Hazard Mitigation Assistance Programs.[23] These assistance programs can help fund the development of preparedness plans.[24]

Takeaway: The Puyallup Plan greatly emphasized identification of strengths in existing programs and plans already being undertaken by the Tribe. By doing so, the Tribe could build upon existing program structures and use its financial resources most efficiently. Additionally, the Puyallup Plan was unique among the Tribal plans that were analyzed in that it screened a number of adaptation measures adopted by other tribes to identify the most effective, affordable, and feasible adaptation options for its community. Due to the Tribe's governmental structure, which already included its own Environmental Department, as well as strong reliance on existing programs and plans, the Puyallup Plan is an example of a plan solely created and implemented by the community with limited outside partnerships and funding resources. Because of this, its level of detail and specificity in some regards is limited in comparison to the remaining two Tribal plans.

[17] *Id.* at 33. Existing programs include habitat restoration, hatchery and fishery management, water quality monitoring, emergency management and preparedness planning, and public education and outreach programs. *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.* at 34-38.
[21] *Id.* at 34.
[22] *Id.* at 2.
[23] *Id.* at 32.
[24] *Id.*

B. Blackfeet Nation Climate Change Adaptation Plan

The Blackfeet Nation is one of the largest tribes in the United States, composed of over 17,000 members.[25] Located in Northwest Montana, the Blackfeet Nation was established by treaty in 1855. Tribal members had felt the impacts of a changing climate for many years, and recognized the threat it posed to their own livelihoods and cultural practices. The Blackfeet Nation sought to create a Climate Change Adaptation Plan ("The Blackfeet Plan") to meet the demands of the Tribal members themselves. .[26]

The Blackfeet Plan was created and implemented by the Blackfeet Environmental Office and the Center for Large Landscape Conservation, a Montana non-profit organization.[27] The first step in the creation of the Blackfeet Plan was to conduct a comprehensive review of climate trends and predictions.[28] The Blackfeet Nation used data from several United Nations Intergovernmental Panel on Climate Change (IPCC) reports to track the trends and predictions for its geographic area.[29] These predictions were presented at three informational and planning meetings with the Planning Team, which was comprised of representatives from several Tribal resource management sectors including "agriculture, culture, forestry, fish, wildlife, land and range, water, and human health."[30] This team utilized Northern Arizona University's Institute for Tribal and Environmental Professionals' (ITEP) Vulnerability and Risk Matrices as well as the university's Identifying Priority Planning Areas Tool to identify the key focus areas within each resource management sector.[31]

The Blackfeet Plan dedicates an entire chapter to each resource sector's goals, strategies, and future actions.[32] More specifically, each resource sector chapter is comprised of several components: observed impacts, expected impacts, probability of impacts, vulnerability, goals and actions, required and existing authority and capacity, as well as partners and potential funding sources.[33] To analyze a resource sector's vulnerability level, the Blackfeet Plan determined the resource's level of exposure, sensitivity, and adaptive capacity.[34] For example, the Blackfeet Plan determined that the agricultural sector's exposure and sensitivity to the effects of climate change were high and that the adaptive capacity for the sector is low because of the "given constraints and complexities of governing fractioned land parcels in the Blackfeet Nation."[35] The last important component of the Blackfeet Plan planning process was sending Planning Team members to attend

[25] *Home*, BLACKFEET NATION, http://blackfeetnation.com/ (last visited June 24, 2019).
[26] *Blackfeet Climate Change Adaptation Plan, supra* note 4, at 1.
[27] *Id.*
[28] *Id.*
[29] *Id.* at 113. The IPCC is an organization of United Nations government members that works to provide governments with scientific information that they can use to develop climate policies. *About the IPCC*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, https://www.ipcc.ch/about/ (last visited July 22, 2019).
[30] *Blackfeet Climate Change Adaptation Plan, supra* note 4, at 1.
[31] *Id.*
[32] *Id.* at 44.
[33] *Id.* at 45-53.
[34] *Id.* at 49. The process of determining the three vulnerability levels varied by resource sector, as some were more scientifically based analyses (e.g., agriculture) while some required a less formal analysis (e.g., cultural resources and traditions).
[35] *Id.*

regional and national climate change adaptation conferences.[36] Some of these conferences include the National Adaptation Forum and the Roundtable on the Crown of the Continent Annual Conference.[37]

The Blackfeet Plan took three years to complete. The Blackfeet Nation is currently creating a Blackfeet Agricultural Resource Management Plan, which will serve as a "strategic plan for the comprehensive management of the reservations [sic] agricultural resources and develop tribal policies based on the visions that the tribe and tribal landowners have for their reservation."[38] The Tribe will begin building an Integrated Resource Management Plan within the next two years. Financial Support for the Blackfeet Plan was provided by the U.S. Bureau of Indian Affairs' Tribal Resilience Program, the Center for Large Landscape Conservation through a grant awarded to the Northern Landscape Conservation Cooperative, and a Climate Impacts and Health grant from the National Indian Health Board.[39]

Takeaway: The Blackfeet Plan greatly relied on the Institute for Tribal and Environmental Professionals' Vulnerability and Risk Matrices and Identifying Priority Planning Areas Tool. In addition, the Blackfeet Plan created a thorough guide of observed and expected impacts, a vulnerability assessment, a list of goals and actions, as well as identified partners and funding sources for each of the plan's focus sectors. Lastly, the Blackfeet Plan was the only plan that discussed participation in regional and national adaptation conferences as an instrumental part of its plan formation process.

C. Metlakatla Indian Community Climate Change Adaptation Plan

The Metlakatla Indian Community (MIC) lives on the Annette Islands, which are located off the western coast of Southeast Alaska. The Indian Reserve can only be reached by seaplane, boat, or ferry. The MIC was federally recognized under Provisions Section 16 of the 1971 Indian Reorganization Act, 25 U.S.C. Section 476 Delegations and currently has 1,460 community members. .[40] In 1981, Congress set aside the Annette Islands as a federally recognized Reserve.[41] The Metlakatla Indian Community Climate Change Adaptation Plan ("The Metlakatla Plan") was

[36] *Id.* at 1.
[37] *Id.*
[38] *Plan Overview*, BLACKFEET AGRIC. RES. MGMT. PLAN, http://blackfeetarmp.com/plan-overview (last visited July 23, 2019).
[39] *Id.* at iv. The Bureau of Indian Affairs' Tribal Resilience Program granted the Blackfeet Nation $73,550 to conduct tribal collaboration in the Great Northern Region in 2016 as well as $137,880 to fund the Tribe's adaptation workshops and $10,500 to fund travel support for adaptation planning in 2018. *See 2017/2018 Resilience Funding Awards Summary*, U.S. DEP'T OF INTERIOR, BUREAU OF INDIAN AFF. (2018); *FY 2016 Tribal Climate Resilience Program Funding*, U.S. DEP'T OF INTERIOR, BUREAU OF INDIAN AFF. (2016). The Center for Large Landscape Conservation awarded the Blackfeet Nation and the Northern Landscape Conservation Cooperative a $183,418 grant in 2017 to help fund the Blackfeet Plan. *See Climate Change Challenge: Less Water, More Droughts*, Wildlife Conservation Soc'y, https://www.wcsclimateadaptationfund.org/climate-conservation-dba-center-for-large-landscape-conservation (last visited July 1, 2019).
[40] *Id.* at 9.
[41] H.R. Res. 561, 51st Cong. § 15 (1891).

intended to "align the Tribe's cultural, economic, environmental, recreational, and social demands."[42]

The Metlakatla Plan is strongly influenced and guided by the community's Traditional Ecological Knowledge (TEK).[43] The MIC identified its main environmental and health vulnerabilities through the integration of TEK and current scientific evidence.[44] In addition, during the initial planning stages, the MIC conducted several intensive cultural interviews with Metlakatla members to identify community priorities that would serve as a "stable framework" for the Metlakatla Plan as a whole.[45] The Metlakatla Plan's early formation also included developing target dates over a ten year period at which the MIC would reassess the effectiveness of the Metlakatla Plan.[46] For example, following year one, the MIC intends to "update vulnerability status, revise assessments, and input new available data."[47]

The majority of the Metlakatla Plan is focused on creating recommended strategies as well as specific near term and long term next steps for each vulnerability area identified.[48] The Metlakatla Plan also includes sections dedicated to identifying potential funding opportunities and necessary partnerships.[49] In the Partnerships section, the MIC acknowledges the benefits of working closely with their own Tribal community and Council, the local school district, the region-specific Bureau of Indian Affairs, federal agencies such as the Department of Interior and U.S. Forest Service, a state university, and other local tribal communities.[50]

The Metlakatla Plan was created over the course of one year.[51] The MIC will implement the identified climate change adaptation practices into a number of the MIC's other community plans, including:

- Land Use and Community Development Plan,
- Forest Management Plan, Fisheries Management Plan,
- Invasive Species Environmental Assessment and Management Plan,
- and Strategic Energy Plan.[52]

Financial support for the Metlakatla Plan was provided by the 2015 Bureau of Indian Affairs Tribal Cooperative Landscape Conservation Program.[53] More specifically, the MIC was

---

[42] *Metlakatla Indian Community Climate Change Adaptation Plan*, METLAKATLA INDIAN CMTY., 6 (2017) https://drive.google.com/file/d/1Pba8RIj5q4nkWH4c8bT-RwLD-lg2aKLb/view.
[43] *Id.* at 7.
[44] *Id.*
[45] *Id* at 7-8.
[46] *Id.* at 8.
[47] *Id.*
[48] *Id.* at 58-67.
[49] *Id.* at 80.
[50] *Id.*
[51] *Id.* at Forward.
[52] *Id.* at 8.
[53] Genelle Winter, Climate & Energy Coordinator, Metlakatla Indian Community, Metlakatla Indian Community Climate Change Adaptation Plan at the National Adaptation Forum (2019), https://www.nationaladaptationforum.org/sites/default/files/presentation_documents/Metlakatla%20Indian%20Community%20Climate%20Change%20Adaption%20Plan%202019.pdf.

awarded $85,000 "to perform a survey of the waters and lands of Annette Islands Reserve to determine climate change impacts" and $14,507 for "travel support for climate adaptation planning training and cooperative efforts".[54]

Takeaway: The Metlakatla Plan placed the most emphasis on the role of traditional ecological knowledge and community values in creating its list of vulnerabilities to address. The Metlakatla community was greatly involved in the creation of, and executing data gathering for, the plan. This plan also stressed the importance of forming partnerships from a variety of different sectors.

Other Community Plans

Tribal communities can also look to Virginia municipal planning efforts such as comprehensive plans and hazard mitigation plans as examples of planning frameworks that seek to meet both short- and long-term community goals. The Commonwealth of Virginia requires each local planning commission to prepare and recommend a comprehensive plan for the development of the locality.[55] The purpose of these plans is to "guid[e] and accomplish[] a coordinated … development of the territory which will, in accordance with present and probable future needs and resources, best promote health, safety, morals … and general welfare of the inhabitants."[56] The Code of Virginia also specifically directs certain localities that are especially vulnerable to aspects of climate change, such as sea-level rise and recurrent flooding, to incorporate planning for such events into its next comprehensive plan.[57]

In addition, a number of Virginia localities have developed Regional Hazard Mitigation Plans with financial assistance from FEMA and often through an effort coordinated by the appropriate planning district commission.[58] In order to receive non-emergency disaster assistance, such as funding for hazard mitigation projects, FEMA requires state, tribal, and local governments to develop and adopt regional hazard mitigation plans.[59] The purpose of hazard mitigation plans is to "identify risks and vulnerabilities associated with natural disasters, and develop long-term strategies for protecting people and property from future hazard events."[60]

Although both comprehensive plans and hazard mitigation plans are typically broad in scope and not necessarily environmental in nature, most plans contain an environmental element and serve as resources from which Tribal communities can incorporate lessons learned and identify potential community partners.

---

[54] *FY 2015 Tribal Cooperative Landscape Conservation Program Funding*, U.S. DEP'T OF THE INTERIOR, BUREAU OF INDIAN AFF. (2015), https://www.bia.gov/sites/bia.gov/files/assets/bia/webteam/pdf/idc1-030646.pdf.
[55] VA. CODE ANN. § 15.2-2223(A) (2018).
[56] *Id.*
[57] *See id.* § 15.2-2223.3. Localities included in the Hampton Roads Planning District Commission "shall incorporate into the next scheduled and all subsequent reviews of its comprehensive plan strategies to combat projected relative sea-level rise and recurrent flooding."
[58] *See e.g.*, *Regional Mitigation Plan*, *supra* note 6.
[59] *Hazard Mitigation Plan Requirement*, FED. EMERGENCY MGMT. AGENCY, https://www.fema.gov/hazard-mitigation-plan-requirement (last visited June 24, 2019).
[60] *Hazard Mitigation Planning: Overview*, FED. EMERGENCY MGMT. AGENCY, https://www.fema.gov/hazard-mitigation-planning (last visited June 24, 2019).

A. Portsmouth, Virginia: *Build One Portsmouth* – Comprehensive Plan

The City of Portsmouth is a Tidewater, Virginia community with a population of over 95,000 residents.[61] *Build One Portsmouth* was created in 2018 to serve as the city's comprehensive plan, establishing a "long range plan for the future development, revitalization, and preservation of the city."[62] The first step in the development of *Build One Portsmouth* was to conduct three rounds of informational and idea generating work sessions with Portsmouth citizens to identify key trends that should influence the plan.[63] These trends included socio-economic challenges, improving transportation and infrastructure, and maintaining cohesive neighborhoods.[64]

The structure of *Build One Portsmouth* is split into three smaller plans: the Strategic Plan, the Geographic Plan, and the Implementation Plan.[65] In the Strategic Plan, the city identifies the community's guiding principles and vision for the community, the key aspirations for the plan, broad concepts and strategies for the city to utilize, and specific planning tactics.[66] For example, to achieve the community's vision to be more resilient, the Strategic Plan lists a number of goals, including working with regional, state, and federal agencies to mitigate the impacts of climate change.[67] In order to meet this goal, the city identified strategies, such as examining all critical assets that have high exposure to hazards and develop resiliency solutions for these facilities.[68] Lastly, the city used this strategy to create tactical solutions, including conducting a flooding vulnerability analysis of critical assets.[69]

The Geographic Plan serves as a visual framework by which the city could create specific recommendations for particular geographic areas within the community.[70] Examples of geographic areas identified include: historic, environmental and open space resources, as well as flood exposure areas.[71] The Implementation Plan includes action prioritization and implementation tools and elements sections. In the action prioritization section, the city places each of their tactical solutions identified in the Strategic Plan into one of three timeframe categories: short term efforts, mid-term efforts, and long-term efforts.[72] By doing so, Portsmouth acknowledged that all of these solutions cannot be implemented concurrently, and created more manageable checkpoints for the city to reach. Finally, the implementation tools and elements section highlights the *Build One*

[61] *Build One Portsmouth*, CITY OF PORTSMOUTH 8 (2018) http://buildoneportsmouth.org/finalplan; file:///C:/Users/kanewcomb/Downloads/Build-One-Portsmouth-Adopted-11.27.18%20(1).pdf; *Community Facts: Portsmouth, Virginia*, U.S. CENSUS BUREAU, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF (last visited June 24, 2019).
[62] https://www.portsmouthva.gov/396/Comprehensive-Plan.
[63] *Id.* at 8-11.
[64] *Id.* at 9-10.
[65] *Id.* at 14-19.
[66] *Id.* at 14.
[67] *Id.* at 41.
[68] *Id.*
[69] *Id.*
[70] *See id.* at 157.
[71] *Id.* at 158-159.
[72] *See id.* at 220. Short Term Efforts will start in the next six months and be completed within twenty-four months. Mid-term Efforts will start within the next eighteen months and be completed within five years. Long-term Efforts vary by project, but will start more than three year from the adoption of the plan.

Portsmouth's amendment and update procedures, budget and funding for 2019, and alternative sources of funding for the future.[73]

Build One Portsmouth was developed over two years.[74] In development of the plan, the City of Portsmouth contracted with McBride Dale Clarion Consultants, a consulting firm based in Cincinnati, Ohio.[75] The overall cost of the plan was $430,000, with $30,000 of that being cost overruns on outreach efforts.[76]

Takeaway: *Build One Portsmouth* takes the unusual approach of splitting its Comprehensive Plan into three separate plans: the Strategic Plan, the Geographic Plan, and the Implementation Plan. The Geographic Plan in particular could be useful for tribal communities that have separate challenges and aspirations for several different types of geographic areas. Additionally, *Build One Portsmouth* provided the most thorough timeline of project goal implementation.

B. Hampton Roads Region, Virginia: Hampton Roads Hazard Mitigation Plan

The Hampton Roads region is a set of communities in eastern Virginia known for historic landmarks and coastal recreation.[77] The Hampton Roads Planning District Commission (HRPDC), with assistance from member localities and Salter's Creek Consulting, Inc., prepared the Hampton Roads Hazard Mitigation Plan ("Hampton Roads Plan") to address vulnerabilities to hazards in the region as a whole, as well as for each of the 22 communities involved.[78]

In formation of the plan, HRPDC created a steering committee to "help design and propose appropriate mitigation actions for incorporation into the Mitigation Action Plan".[79] In addition, the steering committee was directed to supervise a number of working groups, including a planning committee.[80] During the planning committee's first meeting, the committee identified the hazards of most critical concern to the Hampton Roads region[81] using FEMA's hazard identification and loss estimation software package, HAZUS-MH.[82] In its second meeting, the committee discussed local strengths and weaknesses through various capability assessments to create general mitigation strategies for each specific locality and the region as a whole.[83] The planning committee then held

[73] *Id.* at 224-225.
[74] *Id.* at 8.
[75] *Id.* at 3.
[76] E-mail from Brian Swets, Planning Adm'r, City of Portsmouth, Va., to Karly Newcomb, Research Assistant, Va. Coastal Pol'y. Ctr. (July 29. 2019) (on file with author).
[77] *Coastal Virginia – Hampton Roads*, ST. OF VA., https://www.virginia.org/Regions/HamptonRoads (last visited June 24, 2019).
[78] *Hampton Roads Hazard Mitigation Plan*, HAMPTON ROADS PLANNING DIST. COMM'N, Title Page (2017), https://www.hrpdcva.gov/uploads/docs/2017%20Hampton%20Roads%20Hazard%20Mitigation%20Plan%20Update%20FINAL.pdf.
[79] *Id.* at 2:4.
[80] *Id.* at 2:3.
[81] *Id.* at 2:6.
[82] *Id.* at 5:2.
[83] *Id.* at 2:7.

a number of public meetings and feedback forums to gather public comment on the Hampton Roads Plan's general strategies and goals.[84]

After public feedback was incorporated into the plan, the steering committee identified all hazards threatening the region and what community assets would be at risk.[85] Then, the committee called for a vulnerability assessment to measure the potential impact that could be caused by each hazard.[86] This vulnerability assessment was coupled with the planning committee's capability assessment to determine what strengths the region already possessed to address each hazard through existing authorities, programs, and resources.[87] These assessments were subsequently used to create 236 Mitigation Actionss, which addressed various needs throughout the Hampton Roads communities.[88] For each proposal, the Hampton Roads Plan identified: a cost-benefit analysis, hazards to be addressed, priority level of the proposal, estimated cost, potential funding sources, lead agencies and departments responsible, and an implementation schedule.[89] The final notable aspect of the Hampton Roads Plan was a section dedicated to monitoring, evaluation and enhancement. This section highlighted the need for annual progress reports, a five year plan review, and a plan amendment process.[90]

The Hampton Roads Plan was completed in two years.[91] Financial support for the plan was provided by a FEMA grant of $266,852.[92]

Takeaways: The Hampton Roads Plan is an example of a regional plan that encompassed several different communities. Although the regional aspect may not be very helpful to a tribe, the Hampton Roads Plan serves as a useful guide for how to identify hazards within a community's boundaries. This plan included the creation of both a steering committee and a planning committee, as well as several opportunities for public input. Lastly, this plan included a thorough guide for each risk mitigation policy proposal, including a cost benefit analysis, potential funding sources, and an implementation schedule.

Plan Commonalities

Each of the plans discussed took a differing approach to the long-term adaptation or resilience planning process. However, there were several commonalities that were consistent throughout most, if not all, of the plans. The first commonality was a desire to review current environmental and community data to determine the community's "starting point" in the planning process. Most plans took into account community feedback into determining their plan's starting point, identifying its focus areas, or crafting plan goals. Additionally, each of the plans conducted some type of scientific vulnerability assessment; a number of plans even highlighted the utilization

[84] *Id.* at 2:9-2:11.
[85] *Id.* at 4:1.
[86] *Id.* at 5:1.
[87] *Id.* at 6:2.
[88] *Id.* at 7:14-7:253.
[89] *See id.* at 7:14.
[90] *Id.* at 8:2-8:4.
[91] *Id.* at 2:3.
[92] *Id*. at Report Documentation.

of tools created by educational institutions, such as Institute for Tribal Environmental Professionals' Vulnerability and Risk Matrices.[93] Another common theme was the formation of partnerships with relevant government agencies, educational institutions, scientists, or other similar communities.[94] These partnerships were instrumental in developing thorough and practical adaptation plans. A majority of plans also included a section dedicated to the monitoring process of each plan over time, with some plans even creating a formal amendment process.[95] The last integral part of each plan was the identification of short-term and long term funding sources to carry out each plan's missions.

Existing Resources

This section will identify existing resources that Virginia tribal communities have and additional resources these communities can utilize in order to undertake planning efforts. First, Virginia tribes already have governmental structures in place, such as councils and varying offices and departments that can lead tribal resilience plan formation. The Mattaponi Tribe, Pamunkey Indian Tribe, Chickahominy Indian Tribe, Cheroenhaka (Nottoway) Indian Tribe, and Nottoway Indian Tribe of Virginia are just some of the examples of Tribal communities in Virginia that have Tribal Councils and government structures in place.[96] These councils can work to identify a steering committee made of tribal community members, non-profit organizations, and government partners to lead planning efforts.

In addition, Virginia tribes can access a number of existing data and information sources. For example, the Virginia Institute of Marine Science has a variety of climate-related databases, including its Climate Change Impacts in Virginia: Climate Database, which tribes can use to assess climate trends in their areas.[97] ADAPTVA is another resource for Virginia tribal communities to access region-specific scientific databases, legal guidance, and planning strategies.[98] For legal and policy guidance, Virginia tribal communities can utilize the Virginia Coastal Policy Center's reports on various topics such as planning for sea level rise and recurrent flooding or social vulnerability and environmental justice.[99]

Conclusion

Although many of the existing tribal resilience plans were created by tribes in the western United States, these plans still serve as helpful tools for Virginia tribes looking to adequately

---

[93] *See Blackfeet Climate Change Adaptation Plan*, *supra* note 4, at 1.
[94] *See e.g.*, *Metlakatla Indian Community Climate Change Adaptation Plan*, *supra* note 41, at 80.
[95] *See e.g.*, *Build One Portsmouth*, *supra* note 60, at 224-225.
[96] *See* Sarah Stebbins, *Meet the State-Recognized Virginia Indian Tribes*, NAT'L PARK SERV. (2012), https://www.nps.gov/jame/learn/historyculture/virginia-indian-tribes.htm.
[97] See Climate Change & Coastal Resilience: Data Sources, VA INST. OF MARINE SCI., https://www.vims.edu/ccrm/research/climate_change/data_sources/index.php (last visited July 1, 2019); Climate Change Impacts in Virginia: Climate Database, VA. INST. OF MARINE SCI., https://www.vims.edu/ccrm/research/climate_change/data_sources/database/index.php (last visited July 1, 2019).
[98] ADAPTVA, http://adaptva.com/ (last visited July 1, 2019).
[99] VCPC Reports & Collaborative Documents, WM. & MARY L. SCH., https://law.wm.edu/academics/programs/jd/electives/clinics/vacoastal/reports/index.php (last visited July 1, 2019). Since federally recognized tribes are treated differently than political subdivisions of the Commonwealth, only reports and papers specifically noting tribal communities will be applicable.

prepare for the impacts of climate change while also prioritizing spiritual resources, cultural resources, and community values. Additionally, Virginia community planning efforts — such as comprehensive plans and hazard mitigation plans—provide multi-faceted planning resources to tribes looking to address coastal environmental vulnerabilities specifically. In sum, there are copious resources available to tribes looking to become more resilient, regardless of a tribe's size, resource abundance, or current adaptive capacity. There are several structures and forms a tribe's plan can take, and it is important for tribes to find an adaptation plan that best meets the strengths, weaknesses, and current capabilities of their own communities.

Tribal Communities and State and Local Governments

Existing Relationships

By Mikayla Mangle, JD Candidate 2022, Tulane University Law School

(VCPC Project for the 2020 Sea Grant Law Diversity Internship Program)

Introduction

Tribal and state/local governments have maintained a unique and crucial relationship throughout the United States' history. Today, state and federally recognized Tribes sometimes face obstacles when attempting to implement projects due to state or local government opposition and vice versa. Federally recognized Tribes are sovereign, self-governing entities on equal footing with state governments.[1] State recognized tribes, on the other hand, may not be equal to state governments, depending on the state laws regarding tribal state recognition.[2] State recognized tribes do not have the same benefits as federally recognized tribes in that the tribe's status is recognized by the state but the tribe is not guaranteed funding from the state or federal government. Due to this unique relationship, it is essential that productive cooperation and understanding exists between the Tribal and state/local governments.[3]

This memorandum describes the relationship between tribal, state, and local governments. The summary is broken down into two sections: state and tribal government relationships and local and tribal government relationships. Case studies showcase the relationships between particular Tribes and local or state governments. These case studies demonstrate how certain Tribes and local or state governments are working together and how their collaboration affects Tribal and non-Tribal communities.

State and Tribal Government Relationships

Federally recognized tribal governments and state governments have unusual government-to-government relationships with one another. Due to this unusual relationship, there are sometimes unique jurisdictional conflicts between the two, and coordination and communication could help resolve these issues. For example, tribal citizens are also citizens of the state in which

[1] *Separation of Powers – State-Tribal Relations and Interstate Compacts*, Nat'l Conf. of St. Legis., https://www.ncsl.org/research/about-state-legislatures/separation-of-powers-tribal-interstate-relations.aspx (last visited June 26, 2020).
[2] Martha Salazar, *State Recognition of Am. Indian Tribes*, Nat'l Conf. of St. Legislatures (Oct. 2016), https://www.ncsl.org/research/state-tribal-institute/state-recognition-of-american-indian-tribes.aspx#:~:text=State-recognized%20Indian%20tribes%20are%20not%20necessarily%20federally%20recognized%3B,because%20it%20acknowledges%20their%20historical%20and%20cultural%20contributions.
[3] *Separation of Powers – State-Tribal Relations and Interstate Compacts*, Nat'l Conf. of St. Legis., https://www.ncsl.org/research/about-state-legislatures/separation-of-powers-tribal-interstate-relations.aspx (last visited June 26, 2020).

the Tribe resides, and therefore, the state has an obligation to provide for all tribal citizens.[4] Importantly, a functional tribal-state government relationship allows the state government to be able to better care for their tribal citizens. Furthermore, because all tribal lands lie within state legislative districts, tribal members are eligible for state services and programs, just like any other state citizen. The existence of a strong tribal-state government relationship will help ensure that the state can accurately provide services to tribal members.[5]

Devolution, the process of the federal government transferring resources and responsibilities to state, local, or tribal governments, has caused jurisdictional issues between state and tribal governments. Here, states and tribes typically have overlapping responsibilities which can cause confusion over who has authority over a particular jurisdiction.[6] These jurisdictional issues highlight why there is a need for tribes and states to work together to solve these issues. Further, when states and tribes have strong relationships with each other and are able to coordinate on varying issues, it benefits both of their communities because of their shared interests.

A. State Legislative Committees

Some states have formed legislative committees focused specifically on Native American issues. These committees typically study specific issues and may introduce legislation regarding those issues. The committees with the most success in addressing Native American issues typically have tribes involved in the committee, have bipartisan leadership, and alternate meeting locations between the state capitol and sites on Tribal land.[7] Below are a few examples of legislative committee frameworks utilized to address tribal issues in different states.

Utah's Native American Legislative Liaison Committee regarding Native American issues is composed of eleven members, seven from the House of Representatives and four from the Senate, and is a mixture of political parties. The committee serves as a liaison between tribes and the legislature and balances the interests of Utah and the tribes. The Tribal leaders in Utah meet six times a year and then work with this committee on the issues the Tribal members have discussed. The committee is also responsible for reviewing operations of the Division of Indian Affairs and the other state agencies in Utah who work with tribes. Pursuant to the *Governor's Executive Order on Tribal Consultations*, each state agency is required to annually compile a list of consultation activities with tribes. These lists are submitted to the Governor who provides them to tribal leaders and posts them for public review. Utah's Native American Legislative Liaison Committee works directly with the Tribes, which gives the Tribes an opportunity to share the issues affecting their communities, and to provide input on how these issues should be resolved.[8]

[4] SUSAN JOHNSON ET AL., GOVERNMENT TO GOVERNMENT MODELS OF COOPERATION BETWEEN STATES AND TRIBES (2nd ed. 2009).
[5] *Id*. at 3.
[6] *Id*. at 5.
[7] *Id*. at 18.
[8] *Id*. at 20

The Wyoming Select Committee was established to create better communication between tribes and Wyoming. The committee is composed of three senators and three representatives who act as a liaison between the state legislature and the tribal governments within Wyoming. Also, on this committee are two Tribal leaders who act as liaisons for the Tribes of Wyoming. The tribal leaders are appointed to aid, assist, and advise the state government of Wyoming. Pursuant to Senate Bill 51, which was passed into state law and created the two tribal liaison positions, the two Tribal liaisons are confirmed by the Wyoming State Senate on a two-year term. The Tribal liaisons attend staff meetings with the governor every Tuesday.[9] It is evident from the 2016 Tribal liaisons that the formation of this committee and the use of Tribal liaisons has improved relations between the Tribes and Wyoming.[10] Specifically, the state government has a better understanding of the tribal government systems and vice versa.[11] However, the tribal liaisons believe more could be done, such as better addressing water storage issues on reservations. The 2016 liaisons also believe that while the cooperation between the state and Wyoming Tribes is good, it needs to continue to grow, so tribes must continue to demand this strong relationship and cannot become complacent.[12] Wyoming's Committee of State-Tribal Relations is a good example of how, when tribal members are involved in discussions with the state legislature, a better understanding develops between the two entities.

B. Tribal Delegates in State Legislatures

Currently, Maine is the only state with tribal delegates in the legislature who are not elected as part of their general legislative district. Maine's legislature, which has had tribal delegates since 1820, is more informed on tribal issues due the presence of tribal delegates and the enhanced communication between the tribes and states that the tribal delegates bring. The tribal delegates are elected by their tribes and are not subject to term limits. However, because they were elected by the tribal community and not the general populace of Maine, the tribal delegates do not have any voting power. While tribal delegates cannot vote, they are allowed to participate in floor debates and the committee processes. Further, the tribal delegates can introduce legislation on tribal issues and co-sponsor any legislation. Ultimately, Maine's Tribal delegates are important because they represent the Tribes' voices on tribal issues and can even directly suggest legislation to fix these issues. While other states have drafted legislation to allow for tribal delegates, these efforts have not been successful.[13]

C. State-Tribal Government-to-Government Agreements and Protocols

State-tribal government-to-government agreements establish guiding principles for a government-to-government relationship between state executive branches and tribes. For example, the Oregon legislature established the *Oregon Statute and Executive Order on Tribal State Relations* in 2001 as a way to build better relationships between the Oregon State Government and

[9] *Id.* at 21.
[10] *Wyoming Chronicle*: *Tribal Relations with the State of Wyoming* (PBS television broadcast Apr. 28, 2016).
[11] *Id.*
[12] *Id.*
[13] Susan Johnson et al., *supra* note 4, at 39-40 (other states that have attempted allowing tribal delegates in their state legislature include Wisconsin, South Dakota, and Virginia).

Oregon Tribes. This executive order requires state agencies to promote communication between Tribes and the Government by directing each state agency to develop its own policy on state-tribal relations and to report annually to the governor. The order also directs the Governor of Oregon to convene a yearly meeting where state agencies and Tribes can work together regarding tribal issues. This executive order has also prompted the creation of state/tribal workgroups that meet three to four times a year to discuss issues such as safety, economic development, health and human services, and education.[14]

Another example of a state-tribal government-to-government agreement is the *Washington State Centennial Accord.* This agreement, established in 1989, provides a framework for a relationship that recognizes the respective sovereignty of both the State and the Tribes. The agreement focuses on responsibilities that both the State and the Tribes have for making the relationship between them work. For example, there is an annual meeting held between the governor and Tribal leaders to discuss Tribal issues. There is also a strong focus within the agreement on providing information to state government officials about Indian tribes and their status as independent governments. Ultimately, the accord is generally regarded as successful and is respected by both states and tribes.[15]

D. Potential Models of State-Tribal Relations

There are other well researched state-tribal relationship methods that have been discussed by various state legislators and tribal leaders but have not yet been implemented by any state governments. These methods could be beneficial to creating a more understanding and cooperative relationship between tribal and state governments.

One potential model of a state-tribal relationship is for a state government to create a staff position whose main job is to act as a liaison between the state government and tribes. This position may be similar to an Indian Affairs Commission or office that many states already have, but instead has only one person who specifically focuses on the needs of tribal communities and the states interests while interacting with both entities. Therefore, this staffer could meet the needs of both the tribal communities and the state that an Indian Affairs Commission office may not be able to do. This position would also entail establishing a communications network with tribal leaders and state government staff regarding upcoming legislative proposals that could potentially affect Tribes. Ideally, this position would be non-partisan and would advise legislative staff about how proposed legislation or ideas might affect Tribes. This position would also be in charge of scheduling meetings between tribal leaders and the state government officials. Furthermore, the hiring and overseeing of this position should be a joint effort between both the state government and tribes.[16]

[14] *Id*. at 37.
[15] *Id*. at 33 (*Centennial Accord Between the Federally Recognized Indian Tribes in Washington State and the State of Washington).*
[16] *Id*. at 56-57.

Another model of a state-tribal relationship would be for a state to require "tribal impact statements" in bills that potentially affect tribes. This mandate would require lawmakers to specify the magnitude of potential effects of any proposed legislation on tribes. These tribal impact statements could identify any fiscal effects on the tribe, jurisdictional implications, land degradation, and similar adverse consequences of proposed laws. To sufficiently understand the possible effects of a bill on a tribe, the drafter would likely need training to understand the tribal government process so they can recognize potential effects on Tribes. This training could consist of a training manual developed by tribal representatives along with training sessions. It could also include consultation with Tribal governments.[17]

E. Local and Tribal Government Relationships

Strong tribal and local government relationships can be difficult to achieve because local governments often have to consult with not only Tribes to form a relationship but also the state government. Three examples of tribes that have created a strong, voluntary relationship with the local government will be discussed below. All three Tribes discussed below are federally recognized and have formed these relationships with local governments to achieve mutual goals by resolving conflicts between the two communities. Furthermore, the local governments discussed are in states that have adopted Home Rule, rather than the Dillon Rule.[18] The Home Rule allows for local governments to pass ordinances and make decisions, without the permission from state legislatures, as long as they abide by the state law.[19] These three examples of tribe and local government coordination demonstrate the process and importance of local-tribal collaboration.

i. Ak-Chin Indian Community: Community Council Task Force

One example of tribal and local government coordination is the Ak-Chin Indian Community's Community Council Task Force (Task Force). The Ak-Chin established the Task Force because the community's surrounding land in Maricopa, Arizona, was being developed into housing units and subdivisions. The Ak-Chin Community relies on farming as the bulk of their economy and the majority of their reservation is dedicated to agriculture. However, due to the expansion of Phoenix, Arizona the land characteristics surrounding the Ak-Chin Community is now changing into a more suburban, urban area. These changes prompted the Ak-chin Community to establish the Task Force, which is composed of appointees from the community's offices, as a way to work with developers and local governments to address issues surrounding development.

The Task Force has been successful since its inception because of its strategic methods. First, when a development is proposed near the Ak-Chin's federal reservation, the Task Force assesses the plan to see what type of effects the proposed plan may have on the reservation. The Task Force then meets with the developer of the proposed plan and neighboring governments to

[17] *Id.* at 57.
[18] Honorable Jon D. Russell & Aaron Bostrom, *Federalism, Dillon Rule and the Home Rule*, American City County Exchange White Paper (Jan. 2016), https://www.alec.org/app/uploads/2016/01/2016-ACCE-White-Paper-Dillon-House-Rule-Final.pdf
[19] *Id.*

exchange studies regarding the plan. Next, the Task Force diligently informs the general public and county officials about the effects off-reservation projects have on the Ak-Chin Community by presenting at public hearings and planning hearings. The Task Force also recommends design changes to developers and County officials that could lessen a proposed project's impact on the Ak-Chin Community. Ultimately, all of these efforts made by the Task Force have greatly improved the relationship between the Ak-Chin, the surrounding local government, and project developers. For example, when a regional wastewater plant was proposed by a local utility a few miles from the Ak-Chin's borders that could cause possible wastewater discharge into washes that run through the Ak-Chin reservation, the Task Force began an information campaign about the cultural importance of the washes. The developer of the plan eventually began working with the Community and an alternative plan was adopted. The facility now features an education kiosk that was developed by Ak-Chin members for utility customers.

The Task Force has created a clear and straightforward process for a local government to consult with a Tribe. For instance, county officials know who to contact at the Task Force and how its council members operate. The Task Force has resulted in increased respect between the Community, the local government, and the project developers. The Ak-Chin Community now has a single voice to address major issues affecting their community. The creation of the Task Force has made it easier for the Ak-Chin Community to communicate and consult with the local government and various other local organizations to lessen adverse impacts from off-reservation projects on the Ak-Chin Community.[20]

ii. Swinomish Cooperative Land Use Program

The Swinomish Tribal Community, located north of Seattle, Washington within Skagit County, is a "checkerboard" tribal community. A "checkerboard" tribal community occurs when the Native American held portions within the reservation's boundaries are scattered and non-continuous. This "checkerboard" community was caused by the passage of the General Allotment Act of 1887, which transferred lands within the reservations from collective tribal ownership to individual ownership.[21] Under the Allotment Act, a portion of land was allotted to Native Americans and then the remaining was available for public sale.[22] After the Allotment Act, the Swinomish Tribal Community owned four percent of the reservation land, while individual members of the tribe owned fifty percent of the reservation land, and non-Natives owned fee simple title to forty-six percent of the land. Due to this "checkerboard" system, there is a great deal of conflict between the Swinomish Tribal Community and Skagit County over land use.

This conflict led the Swinomish Tribal Community and Skagit County to draft a series of agreements to abide by when working together on matters regarding land use. In 1987, a

[20] *Community Council Task Force Ak-Chin Indian Community*, The Harv. Project on American Indian Econ. Dev. (2008), https://hpaied.org/sites/default/files/publications/Community%20Council%20Task%20Force.pdf
[21] *Dawes General Allotment Act*, Encyclopedia Britannica, https://www.britannica.com/topic/Dawes-General-Allotment-Act.
[22] *Id.*

Memorandum of Understanding (MOU) was drafted where parties agreed to coordinate land use policy by working together on a common plan. The MOU created a nine-member planning advisory board consisting of four members appointed by the Tribe, four members appointed by the county, and a neutral facilitator appointed jointly by the Tribe and County. In 1990, the Draft Comprehensive Land Use Plan was created which was the first comprehensive planning effort attempted by a Tribe and a county. The Land Use Plan articulates land use goals, establishes policies to guide the stewardship of the land and resources of the reservation, and outlines an implementation strategy. Finally, in 1996, a Memorandum of Agreement (MOA) was established to give a set of procedures for administrating the Land Use Plan. The MOA requires joint review proposals, provides dispute resolution mechanisms, and affirms that cooperative problem solving is the preferred way for making decisions.

This program, established by the Swinomish Tribal Community and Skagit County, has helped with the land use conflicts in numerous ways. For one, land development has been expedited due to there being a clear permitting process where the two governments (the Tribal and County government) coordinate a review of the permit application and make a decision from there. Also, the permit applicants now only work directly with one government body rather than two. This program ultimately resolved many issues with the "checkerboard" reservation and has assisted with educating non-natives about the Tribe. Due to this new understanding between the tribal community and the county, there is now less conflict over land use, less litigation between the Tribe and County, and a better cultural understanding between the Tribe and County.[23]

iii. The Flandreau Police Department

The Flandreau Santee Sioux Tribe, located in Moody County, South Dakota in the City of Flandreau, had trouble meeting the public safety needs for all of their Tribal citizens. Additionally, there were jurisdictional issues between the Flandreau Santee Tribe and local, state, and federal police personnel in South Dakota. These jurisdictional issues created confusion in enforcement, particularly over which entity had jurisdiction and authority in certain areas. This confusion caused delays in response time and inconsistent enforcement practices being used within Tribal lands that lacked cultural understanding. As a result, the Flandreau Tribe contracted the Moody County Sheriff's Office, who was at the time also the law enforcement agency for the city of Flandreau, to be the primary law enforcement agency for tribal citizens both in and around the City of Flandreau. However, this arrangement greatly diminished the Sheriff's Office's resources and prompted the Flandreau Santee Sioux Tribe and the City of Flandreau to form a Public Safety Commission in 2000. Commission membership includes tribal leaders, businesspeople, health and educational professionals, and other community members. A study completed by the Commission in 2000 led to the formation of the Flandreau Police Department (FPD).

Under the authority of the Public Safety Commission, the Tribe and the City share governance responsibility of the FPD. The Commission hires employees for the FPD, oversees the

[23] *Swinomish Cooperative Land Use Project*, The Harv. Project on American Indian Econ. Dev. (2000), https://hpaied.org/sites/default/files/publications/Swinomish%20Cooperative%20Land%20Use%20Program.pdf.

budget, and has monthly meetings with the Tribal Council and Flandreau's City Council. Since the FPD provides law enforcement services to both the City of Flandreau and the Tribe, the police officers receive training in community policing, safety, and tribal laws. The creation of the FPD has improved public safety within the area. Further, more crime is being reported which suggests that there is increased community trust in the police. Likewise, drunk driving occurrences are decreasing, and in response to the methamphetamine crisis within the area, there has been increased arrests for drug users and enrollment in treatment facilities.

Because the FPD is a joint effort between the Tribe and the city, it eliminates possible jurisdictional issues. Furthermore, this system allows for the police to listen to the community's input through educational forums and a community coalition that was formed to address drug abuse. The FPD creates a law enforcement department where both communities, tribal and the City of Flandreau, can share their input and work together to achieve public safety for all of their citizens.[24]

Conclusion

The tribal and state government relationships show that when a state legislature and tribal community work together, both entities get a better understanding of one another's government process and community. For example, the Flandreau Police Department provides better law enforcement services to both the Flandreau Santee Sioux Tribe and the City of Flandreau.

One theme of a successful tribal and state/local government relationship is direct tribal involvement in the decision-making process. For example, in all of the examples of the tribal and local government relationships (the Ak-Chin Community Task Force, the Swinomish Cooperative Land Use Program, and the creation of the Flandreau Police Department), the tribal governments worked directly with local leaders and land developers to reach a resolution. The local government, in these examples, did not just take it upon themselves to reach a resolution and inform the tribe of that resolution, but they instead worked directly with the tribe to agree on a solution to whatever problem the tribe and/or city was facing. The benefits of working directly with the tribe also hold true for the tribal and state government relationships examples. These examples of tribal and state government relationships are successful because tribal leaders were a part of the state legislature's decision making process, such as with the tribal liaisons in Wyoming's Select Committee on State-Tribal Relations and the tribal delegates in Maine's state legislature. Tribal leaders, in these tribal and state government relationship examples, had an actual voice in the state legislation process which made for better communication and cooperation between tribal and state governments.

Various state governments have incorporated tribal members in the state legislation making process when a tribal community may be affected by a state decision. In Virginia, the General Assembly passed House Bill 814, which directed the Secretary of the Commonwealth to establish

[24] *Flandreau Police Department*, The Harv. Project on American Indian Econ. Dev. (2005), https://nnigovernance.arizona.edu/sites/default/files/attachments/text/honoring_nations/2005_HN_Flandreau_police_dept.pdf.

a Virginia Indian Advisory Board to assist the Secretary in reviewing applications seeking recognition as a Native American tribe.[25] The members on the board consist of experts on history and tribal communities, along with members from Virginia tribes.[26] Having representatives from Virginia tribes on the board allows the state of Virginia to hear input from actual tribal members when making the decision to give a tribe state recognition. In conclusion, these examples of tribal cooperation with governments suggest that including tribes in a decision-making process produces the most successful tribal and state/local government relationships. Including all governments--tribal, state, and local--in the conversation benefits both the tribal communities and the governments by allowing these parties to make mutually beneficial decisions.

[25] Secretary of the Commonwealth Va. Indians, https://www.commonwealth.virginia.gov/virginia-indians/# (last visited July 16, 2020).
[26] *Id*.